

**IN RE RANDOLPH SCOTT BY )  
NEXT FRIEND and SPECIAL )  
ADMINISTRATOR VIANNA )  
SIMMONS, )**

Case number 4:10cv1578 TCM

## MEMORANDUM AND ORDER

This matter is before the Court on individual Defendants' motion to stay discovery with regard to the individual capacity claims in the case and to stay the Court's Order of December 15, 2010 ("motion to stay") [Doc. 30].

The December 15, 2010, order was a "Rule 16 Order" that, in relevant part, required the parties to file a Joint Scheduling Plan by January 5, 2011, and set a Rule 16 Conference for January 12, 2011. [Doc. 29.] On January 5, 2011, the parties filed a Joint Scheduling Plan, and on January 12, 2011, the Court held a Rule 16 conference. Therefore, the motion to stay will be denied as moot to the extent it sought a stay of the December 15, 2010, order.

The motion to stay also requests a stay of discovery on the federal constitutional tort claims in Counts V through VIII of the complaint to the extent those claims are asserted against the individual Defendants in their individual capacities. The individual Defendants ask for this stay until the Court resolves qualified immunity issues that will be presented by these Defendants in their responses to the complaint, which are due January 28, 2011. Because

qualified immunity is a "limited 'entitlement not to stand trial or face the other burdens of litigation,'" **Ashcroft v. Iqbal**, 129 S.Ct. 1937, 1945-46 (2009) (quoting Mitchell v. Forsyth, 472 U.S. 511, 526 (1985)), the motion to stay will be granted as to discovery.

Accordingly,

**IT IS HEREBY ORDERED** that individual Defendants' motion to stay [Doc. 30] is **GRANTED in part** so as to stay discovery on the federal constitutional tort claims in Counts V through VII of the complaint against individual Defendants in their individual capacities until this Court resolves qualified immunity issues raised by those Defendants and is **otherwise DENIED**.

/s/ Thomas C. Mummert, III  
THOMAS C. MUMMERT, III  
UNITED STATES MAGISTRATE JUDGE

Dated this 21st day of January, 2011.